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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,888	06/07/2005	Joannes Gregorius Bremer	NL 021261	8401

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
SHAH, SAMIR M	

ART UNIT	PAPER NUMBER
2856	

MAIL DATE	DELIVERY MODE
01/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/537,888	Applicant(s) BREMER ET AL.	
	Examiner Samir M. Shah	Art Unit 2856	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the s ame day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice o f Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date o f filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally reje cted claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-12*.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final actio n, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Samir M. Shah

Continuation of 11. does NOT place the application in condition for allowance because: As to Applica nts' argument, "the specification does contain sufficient information regarding the subject matter of claim 8 as to enable one skilled in the pertinent art to make and use the claimed invention at the time of the filing of the present application without u ndue or unreasonable experimentation", the Examiner disagrees. Although, the specification may provide enablement for the sensor signals being monitored in turn via a single channel or the output of the single channel being monitored discontinuously in tim e, the specification does not provide enablement for the sensor signals being "produced" discontinuously in time (emphasis added). The specification description at page 3, line 30 to page 4, line 2, cited by the Applicants, does not provide any explanation of how the sensor signals would be "produced" discontinuously in time. Moreover, the Applicants' arguments do not provide any answers to these questions posed by the Examiner in the previous Office Action: Would additional structural elements be required to achieve this function? Would custom-made/function-specific sensors be required for producing sensor signals discontinuously in time? Therefore the 35 U.S.C. 112(2nd) rejection of claim 8 is still maintained.

As to the 35 U.S.C. 102(b) rej ection of claims 1-7 and 9-12 as being anticipated by Klapman (US Patent 5,723,786 henceforth "Klapman"), the rejection is still maintained. As to Applicants' argument, "Examiner Shah misinterprets Klapman as teaching a processor 24 (FIG. 3 of Klapman) rec eiving sensor signals from accelerometers 18, 20 and 22 (FIG. 3 of Klapman) at a single input channel of processor 24 from a single output channel of a measurement unit including accelerometers 18, 20 and 22 in a continuous or discontinuous manner", the Examiner disagrees. As shown in Figure 4, Klapman shows "an alternate embodiment of the impact measuring device" and the impact measuring device (14) is clearly mislabeled as reference number 24 and processor (24) is mislabeled as reference number (36). As shown in the figure, the outputs from the accelerometers (18, 20, 22) are passed through an analog/digital converter (34), which has a single output channel and a single output which is received by a single input channel of processor (24) as a single input (figure 4; column 2, lines 41-45).

As to claims 1, 6 and 9, note that the word "operable" implies an intended use and as long as a structural limitation provided by a prior art reference is capable of performing the function that follows the word "operabl e", it would meet the limitations following the word "operable". Moreover, it is noted that the intended use of a structural element (as implied by the word "operable") does not afford patentable weight. The court Held, In re Pearson, 494 F.2d 1399, 181 US PQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967)) In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham , 2 USPQ2d 1647 (BdPatApp & Inter 1987), that the recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim.

Therefore, since Klapman's measurement unit/impact measuring device (14) is "operable" to output the sensor signals in turn on a single output channel, the rejection of claims 1-5 is maintained. Further, since Klapman's processor (24) is "operable" to sample the output channel of the measurement unit/impact measuring device (14) discontinuously in time, the rejection of claims 9 -12 is maintained. Also, as shown in figure 4, the sensor signals are monito red via a single channel by the processor (24), at the object being monitored. Moreover, since "Time division multiplexing (TDM) may be used to transceive the three signals in three repeating time slots", it is clear that these sensor signals can be monito red in turn at the object being monitored. Therefore, the rejection of claims 6 and 7 is maintained.

In conclusion, the Applicants' arguments do not place the application in condition for Allowance.

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